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Paper No. 8

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12930 SARATOGA AE. SUITE D1  
SARATOGA, CA 95070

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**AUG 07 2003**

**OFFICE OF PETITIONS**

In re Application of  
Handong Wu  
Application No. 09/779,017  
Filed: February 7, 2001  
Attorney Docket No. NETAP009

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:  
: DECISION GRANTING PETITION  
: UNDER 37 CFR 1.137(b)  
:

This is a decision on the petition, filed May 19, 2003, which is being treated as a petition under 37 CFR 1.137(b) to revive the instant nonprovisional application for failure to timely notify the U.S. Patent and Trademark (USPTO) of the filing of an application in a foreign country, or under a multinational treaty that requires publication of applications eighteen months after filing. See 37 CFR 1.137(f).

The petition is GRANTED.

Petitioner states that the instant nonprovisional application is the subject of an application filed in an eighteen month publication country on March 15, 2001. However, the USPTO was unintentionally not notified of this filing within 45 days subsequent to the filing of the subject application in an eighteen month publication country.

The petition notes that a Request to Rescind Previous Nonpublication Request Under 35 U.S.C. 122(b)(3)(B)(ii) (Request) was filed on March 15, 2001; however, no Request was found among the application papers. Therefore, on August 4, 2003, petitioner provided a copy of a Request to Rescind Previous Nonpublication Request Under 35 U.S.C. 122(b)(3)(B)(ii), as well as a post card receipt therefor dated March 19, 2001. While the Request includes a certification of mailing under 37 CFR 1.8, no benefit is given to a certificate of mailing on a rescission of a nonpublication request in determining whether applicant has rescinded the Nonpublication request before or on the date a counterpart application is filed in an eighteen-month publication country.

In view of the above, this application became abandoned pursuant to 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c) for failure to timely notify the Office of the filing of an application in a foreign country or under a multilateral international agreement that requires publication of applications 18 months after filing.

A petition to revive an application abandoned pursuant to 35 U.S.C. 122(b)(2)(B)(iii) for failure to notify the USPTO of a foreign filing must be accompanied by:

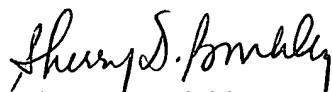
- (1) the required reply which is met by the notification of such filing in a foreign country or under a multinational treaty;
- (2) the petition fee as set forth in 37 CFR 1.17(m); and
- (3) a statement that the entire delay in filing the required reply from the due date of the reply until the filing of a grantable petition was unintentional.

The instant petition has been found to be in compliance with 37 CFR 1.137(b). Accordingly, the failure to timely notify the USPTO of a foreign or international filing within 45 days after the date of filing of such foreign or international application as provided by 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c) is accepted as having been unintentionally delayed.

The previous Request and Certification under 35 U.S.C. § 122(b)(2)(B)(i) has been rescinded. A Notice Regarding Rescission of Nonpublication Request which sets forth the projected publication date of November 13, 2003 accompanies this decision on petition.

Any inquiries concerning this decision may be directed to the Sherry D. Brinkley at (703) 305-9220.

This application is being forwarded to Technology Center Art Unit 2143 for examination in due course.



Sherry D. Brinkley  
Petitions Examiner  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy

Conferee: Frances M. Hicks   
Lead Petitions Examiner

ATTACHMENT: Notice Regarding Rescission of Nonpublication Request